

Butler, Jeff E. (Litigation-NY)

From: Amy Nemetz <anemetz@selendygay.com>
Sent: Thursday, June 30, 2022 4:11 PM
To: Butler, Jeff E. (Litigation-NY); George, Meredith (Litigation-NY); Ron Krock
Cc: David Elsberg; Maria Ginzburg; Jordan Goldstein; Joshua Margolin; David Flugman; Meredith Nelson; Julie Singer; Samuel Kwak; Dominic Budetti; Tony Russo; Max Siegel
Subject: Re: [EXT] RE: Fairfield // Substantial Completion

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Jeff,

Thank you for your responses. We appreciate your offer to produce due diligence materials next week.

We need to better understand the basis for your statements that pre-2008 emails are not available. BIL was obligated to preserve all potentially relevant evidence *no later than* May 2011 when it was named as a defendant in these actions (10-ap-3635 [ECF No. 86], 10-ap-3636 [ECF No. 87]); BIL's preservation obligations could have started much earlier, possibly in 2008 when Bernie Madoff admitted that his entire investment scheme was a fraud, because litigation was reasonably foreseeable at that time. *See* Fed. R. Civ. P. 37(e), 2015 advisory committee note ("potential litigants have a duty to preserve relevant information when litigation is reasonably foreseeable."). In light of the fact that the substantial completion deadline is today, please tell us no later than July 8th when and why BIL's pre-2008 emails were destroyed or otherwise made unavailable for discovery. The Liquidators reserve all rights.

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